



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,794	10/18/2005	Yoshiharu Dewa	279606US6XPCT	6105
22850	7590	12/24/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER HUSSAIN, IMAD	
			ART UNIT 2451	PAPER NUMBER
			NOTIFICATION DATE 12/24/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No.	Applicant(s)	
	10/553,794	DEWA ET AL.	
	Examiner	Art Unit	
	IMAD HUSSAIN	2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-7,9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-7,9 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09 December 2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's submission dated 27 October 2008 has been received and made of record.
2. Claims 2, 3, 5-7, 9 and 11 are pending in Application 10/553794.

Response to Arguments

3. Applicant's arguments filed 27 October 2008 have been fully considered but they are not persuasive.

Applicant argues that as Biddle describes *only downloading* as any method of delivery, mapping Biddle's license file to a startup file that specifies streaming or downloading as methods of delivery is improper.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In the previous office action, Examiner rejected the independent claims as unpatentable over Agresta, Hegde, and Biddle. Agresta and Hegde taught all aspects of the claim, including the options of streaming or downloading content, but did not disclose a start-up file stored on the client. The only aspect of Biddle that was used in

Art Unit: 2451

the rejection, therefore, was the idea of a license file stored on the client. That Biddle's primary invention is designed for executable files is not relevant.

Moreover, while Biddle is not explicit in the contents of his license file, it is well known in the art that license files are used to determine whether a user has access to streaming or downloading delivery methods for multimedia content. See, for example, William Anthony Roberts et al. (US 2004/0044569 A1, hereinafter *Roberts*) [Paragraph 0030].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2, 3, 5-7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agresta et al. (US PGPub 2002/0091848 A1, hereafter *Agresta*) in view of Hegde et al. (US PGPub 2002/0007418 A1, hereinafter *Hegde*) in further view of Biddle et al. (US PGPub 2002/0107809 A1, hereinafter *Biddle*).**

Regarding claims 2, 3, 6, 7 and 9 Agresta teaches *a content processing apparatus* [Agresta: Fig 2 (12)] *adapted to receive deliveries of content from a content delivery apparatus* [Agresta: Fig 2 (20)] *by way of a network* [Agresta: Fig 2 (22)], *the apparatus comprising:*

-a display configured to present a list of a plurality of sets of content [Agresta: “a web-site”, paragraph 0052, which is displayed on “the screens on the device”, paragraph 0049] *including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files* [Agresta: “The user will have the option of ‘streaming’ the selection to the terminal for instant access and simultaneous playing, or downloading the selection onto the memory of the terminal”, paragraph 25];

-an interface configured to accept input specifying information [Agresta: “means for permitting the subscriber to input commands”, Claim 1 and “human interface”, paragraph 0050] *specifying the set of content to be delivered from the sets of content on the list* [Agresta: “permitting the subscriber to select and purchase desired entertainment content from the menu”, claim 10];

-a receiver [Agresta: “Terminal... uses a high-speed wireless Internet Connection to... stream the selection(s) [or] download the full selection(s)”, paragraph 0055 which may utilize “a wireless card such as a PCI card or PCMCIA card”, paragraph 0056] *configured to receive from the content delivery apparatus delivery information specifying streaming or downloaded file as a method of content delivery, said delivery information corresponding to a license of the specified set of content* [Agresta: “the central database”, paragraph 22, and user selection, claim 10]; *and*

-an acquisition unit [Agresta: “Terminal... uses a high-speed wireless Internet Connection to... stream the selection(s) [or] download the full selection(s)”, paragraph 0055 which may utilize “a wireless card such as a PCI card or PCMCIA card”, paragraph 0056] *configured to automatically acquire the set of content delivered from*

Art Unit: 2451

the content delivery apparatus by way of the network [Agresta: “permitting the subscriber to access and download to the terminal any purchased entertainment content on the subscriber's content list” per the user selection, claim 10] *without selecting streaming or downloaded file as the method of content delivery according to the delivery information.*

Agresta does not teach ***automatically acquiring by the contents processing apparatus, without selecting streaming or downloaded file as method of content delivery.***

However, Hegde discloses a method of automatically selecting between streaming or downloading, in full, multimedia content based on the attributes of the requesting device and the size of the content [Hegde: Paragraph 0084; also Claims 1, 3 and 4].

Agresta and Hegde are analogous art in the same field of endeavor as both concern delivering multimedia content from a server to a requesting terminal over a network. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the protocol selection scheme of Hegde for automatic attribute-based delivery selection in the system of Agresta. One of ordinary skill in the art would have been motivated to modify the system of Agresta with the protocol selection scheme of Hegde because in doing so, the system would allow for users having low-bandwidth connections to obtain better multimedia experiences optimized for their devices [Hegde: Paragraph 0006 and 0009].

The combination of Agresta and Hegde does not explicitly disclose that the delivery information is contained in ***a startup file***.

However, Biddle discloses that the delivery information is contained in a startup file [Biddle: Paragraph 0098, "license file"].

Agresta-Hegde and Biddle are analogous art in the same field of endeavor as both concern delivering licensed content over a network. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the license file scheme of Biddle for the storage of options and delivery information in the system of Agresta-Hegde. One of ordinary skill in the art would have been motivated to modify the system of Agresta-Hegde with the license file scheme of Biddle because in doing so, the system would allow for storing all relevant information in a single file.

Regarding claims 5 and 11, Agresta-Hegde-Biddle teaches that *the startup file* ["license file"] *further includes information for accessing the sets of contents* [Agresta: "GUID", paragraph 42 and Biddle: Paragraph 0098].

Conclusion

6. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses

Art Unit: 2451

to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the text of the passage taught by the prior art or disclosed by the examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IMAD HUSSAIN whose telephone number is (571) 270-3628. The examiner can normally be reached on Monday through Friday from 0800 to 1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2451

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/IH/

Imad Hussain

Examiner, Art Unit 2451

/Salad Abdullahi/

Primary Examiner, Art Unit 2457